



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/988,331	12/11/97	FINN	1968-REISSUE

QM31/0122

NEIL D GERSHON
UNITED STATES SURGICAL CORPORATION
150 GLOVER AVENUE
NORWALK CT 06856

EXAMINER	
SHAI, D	
ART UNIT	PAPER NUMBER
3731	

DATE MAILED: 01/22/99

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary

Application No.
08/988,331

Applicant(s)
Finn et al.

Examiner
Daphna Shai

Group Art Unit
3731



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-47 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 1-16 and 47 is/are allowed.

☒ Claim(s) 17-25, 28-33, and 36-45 is/are rejected.

☒ Claim(s) 26, 27, 34, 35, and 46 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3731

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

2. Claims 17-25, 28-33, and 36-45 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Brumfield et al. (5,562,662).

3. Claims 17, 22-25, 28, 29, 33, and 40-45 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mirkovic (5,254,118).

4. An anticipation under 35 U.S.C. 102(b) or 102(e) is established when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 221 USPQ 385 (Fed. Cir. 1984).

Art Unit: 3731

It is well settled that the law of anticipation does not require that the reference teach what appellant is teaching or has disclosed, but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claims are found in the reference. See Kalman v. Kimberly Clark corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1083). Moreover, it is not necessary for the applied reference to expressly disclose or describe a particular element or limitation of a rejected claim word for word as in the rejected claim so long as the reference inherently discloses that element or limitation. See, for example, Standard Havens Products Inc. v. Gencor Industries Inc., 953 F.2d 1360, 21 USPQ2d 1321 (Fed. Cir. 1991).

Allowable Subject Matter

5. Claims 1-16 and 47 are allowed.
6. Claims 26, 27, 34, 35 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Art Unit: 3731

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Daphna Shai** whose telephone number is (703) 308-1685. The examiner can normally be reached on Monday-Friday from 7:30AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Buiz, can be reached on (703) 308-0871. The fax phone number for this Group is (703) 308-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.


Daphna Shai
Patent Examiner
January 18, 1999


MICHAEL BUIZ
SUPERVISORY PATENT EXAMINER
GROUP 3300

1/18/99